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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:

Implementation of Section 309(j)  
of the Communications Act  
Competitive Bidding

PP Docket No. 93-253

REPLY COMMENTS

Motorola Satellite Communications, Inc. ("Motorola Satcom") hereby submits these reply comments in accordance with the Commission's Notice of Proposed Rule Making, FCC 93-455 (released October 12, 1993) ("Notice") in this proceeding.<sup>1/</sup> All of the commenting parties that addressed the Commission's proposals relating to the licensing of systems for the provision of Mobile Satellite Service ("MSS") and Radiodetermination Satellite Service ("RDSS") are in agreement that competitive bidding should not be used as a licensing mechanism for these services. Indeed, no one has supported the Commission's suggestion to use either lotteries or auctions to license any international satellite system.

In its initial Comments in this proceeding opposing the use of competitive bidding for those satellite systems currently

<sup>1/</sup>Due the importance of these issues to Motorola Satcom, it is submitting these Reply Comments separately from those being filed today by Motorola Inc.

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under consideration in the 1610-1626.5 MHz and 2483.5-2500 MHz bands ("RDSS/MSS bands"), Motorola Satcom made the following points:

- (1) The Commission has erroneously assumed that the six pending applications in the RDSS/MSS bands are mutually exclusive. To the contrary, all of the qualified non-geostationary MSS/RDSS applicants can be authorized to construct their proposed systems if the Commission were to adopt an appropriate spectrum sharing plan. There are also several strong policy and legal arguments for dismissing the one geostationary satellite applicant.<sup>2/</sup>
- (2) The Budget Act requires the Commission to consider alternatives to auctions, such as spectrum sharing plans, in order to avoid mutual exclusivity in application and licensing proceedings (e.g., the Big LEO proceedings).
- (3) Absent a finding of mutual exclusivity, there is no legal basis under the Budget Act for auctioning spectrum in the RDSS/MSS bands.
- (4) Even if the pending applications in the Big LEO proceedings could be viewed as mutually exclusive, the objectives outlined in the Budget Act would not be promoted by auctioning this spectrum. For example, competitive bidding of the RDSS/MSS bands would not encourage the development and rapid deployment of new technologies, products and services without administrative or judicial delays. Nor would such a licensing scheme promote economic opportunity and competition, or the efficient and intensive use of the spectrum. All of these objectives would be better met if the Commission proceeded to license MSS/RDSS systems by means of a suitable spectrum sharing plan.
- (5) Competitive bidding would, in all likelihood, lead to other countries following the lead of the United States and auctioning their MSS spectrum. Global

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<sup>2/</sup>In this regard, Motorola Satcom disagrees with TRW Inc.'s unsupported and inconsistent assertions that the six pending MSS/RDSS applications are now mutually exclusive. See Comments of TRW at 6 (Nov. 10, 1993). As explained in Motorola Satcom's Comments in this proceeding, since all of the qualified applicants would have a right to receive an authorization under any one of a number of spectrum sharing plans, a finding of mutual exclusivity can be avoided. See Motorola Satcom Comments at 5-6.

U.S. MSS systems would therefore have to pay many other countries, not just the United States, for the right to use this spectrum. This is a burden that some global MSS systems may not be able to bear. Furthermore, to the extent Inmarsat and other foreign MSS systems are spared this expense, U.S. operators would be placed at a substantial competitive disadvantage in the global mobile satellite communications marketplace, and thereby jeopardize the technological leadership of the United States in important satellite and mobile communications.

- (6) If competitive bidding were used to license Big LEO systems, it would be virtually impossible to determine the value of a U.S. license at the time an auction was conducted due to the global nature of the services and the extensive international coordination which must take place on a bilateral basis. Big LEO systems, unlike terrestrial Personal Communications Service ("PCS") systems, will require licenses in most foreign countries and will be subject to many coordination agreements before service can be provided internationally.

There is substantial support in the record of this proceeding for virtually all of these positions.<sup>3/</sup> Of particular

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<sup>3/</sup> See Comments of Loral Qualcomm Satellite Services, Inc. ("LQSS") at 2 (Nov. 10, 1993) ("the plain language of the Act, its legislative history, and the public interest all counsel against use of auctions or lotteries for licensing MSS/RDSS systems in these frequencies."); Comments of TRW Inc. at 2 (Nov. 10, 1993) ("competitive bidding is not an appropriate spectrum assignment mechanism for the initial licenses to be awarded in the MSS/RDSS."); Comments of AMSC Subsidiary Corp. at 1 (Nov. 10, 1993) ("competitive bidding is not appropriate for Mobile Satellite Service ("MSS") systems licensed by the FCC, which must share the limited spectrum resource with foreign systems."); Comments of Comsat Corp. at 2 (Nov. 10, 1993) ("the use of auctions to award licenses for international satellite communications services is not required by the Budget Act, nor would it serve the public interest. . . . To the extent mutually exclusive situations even arise in international satellite licensing, COMSAT believes it would be far better to consider alternative solutions, such as spectrum sharing arrangements, to avoid having to choose among mutually exclusive applicants for an international satellite license.") See also Comments of Hughes Communications Galaxy, Inc. and DirecTv, Inc. (Nov. 10, 1993); Comments of The American Petroleum Institute (Nov. 10, 1993); Comments of Primosphere Limited Partnership at 1-2 (Nov. 10, 1993); Comments of AT&T at 20-23 (Nov. 10, 1993); Comments of

significance is a recent letter from the Chairman of the Commerce Committee of the House of Representatives, who oversaw the drafting of the competitive bidding legislation and accompanying reports, in which he reminds the Commission of several important provisions in the Budget Act and legislative history. In pertinent part, Chairman Dingell notes:

I am concerned, however, that the Commission's limited discussion of the treatment of the pending Big LEO applications in the competitive bidding Notice is an indication that the Commission may be misinterpreting the intent of Congress with respect to licensing Big LEO systems. In its Notice, it appears that the Commission has failed to take notice of important statutory language in the new law, as well as relevant legislative history, which requires the Commission to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means in order to avoid mutual exclusivity in pending application and licensing proceedings, and thereby avoid auctions and lotteries.

As a general proposition, by granting to the Commission the authority to assign licenses by auction, it was never the intent of Congress for auctions to replace the Commission's responsibilities to make decisions that are in the public interest. Rather, the competitive bidding authority was always intended to address those situations where the Commission could not either narrow the field of applicants or select between applicants based upon substantive policy considerations.

The Committee expects the Commission to continue to exercise its responsibilities to determine how spectrum should be used in the public interest and who are the best qualified to undertake that use.

To underscore that auctions are not a substitute for reasoned decision-making, the new statute specifies (at Section 309(j)(6)(E)) that the Commission is not to abandon its traditional methods of avoiding mutual exclusivity. Congress clearly had the Big LEO proceeding in mind when it added this language to the bill because it believed that mutual exclusivity could be avoided in that proceeding.

\* \* \* \*

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General Communication, Inc. at 14 (Nov. 10, 1993).

In light of the provisions of the House Report, the final statutory language signed by the President, and the presence of viable spectrum sharing plans, such as the one contained in Motorola Satellite's and Loral Qualcomm's joint submission, it is clear that the Commission has an obligation to attempt to avoid mutual exclusivity among qualified applicants in the Big LEO proceeding. . . .

Letter from Chairman John D. Dingell to The Honorable James H. Quello (Nov. 15, 1993) (Attachment 1 hereto).

In addition, Motorola Satcom supports the views of LQSS and TRW regarding the lack of statutory authority to auction feederlink frequencies for MSS/RDSS systems.<sup>4/</sup> Each system that is authorized to provide service in the MSS/RDSS bands should be assigned appropriate feederlink frequencies for transmission to and from gateways. In this regard, Motorola Satcom agrees with the statements of Chairman Dingell who observed in his letter to Chairman Quello:

. . . The statutory text requires, and the Notice recognizes, that in order for there to be competitive bidding, that the subject spectrum enable subscribers "to receive communications signals" or to "transmit **directly** communications signals" [emphasis added].

That Congress included the term "directly" was not inadvertent. The term was incorporated into the legislation in order to distinguish between those who subscribe to spectrum-based services and others whose use of the spectrum is incidental to some other service. In my view, the term "directly" in this instance in essence requires that subscribers operate a transmitter themselves.

Paragraphs 28 and 29 [of the Notice] discuss the Commission's proposal "that licenses used in services as an intermediate link in the provision of a continuous, end-to-end service to a subscriber would be subject to competitive bidding." Inasmuch as these links are

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<sup>4/</sup> See Comments of LQSS at 2 n. 3; Comments of TRW at 23-25.

incidental to the provision of a different, and not necessarily spectrum-based service, subjecting these licenses to competitive bidding procedures would be inappropriate.

Motorola Satcom further agrees with LQSS's views regarding user link spectrum for second generation systems.<sup>5/</sup> A sufficient amount of user link spectrum should be reserved for those MSS/RDSS systems that ultimately become operational in order to ensure that those systems will have sufficient expansion spectrum within which to serve their growing customer bases.

For all of these reasons, as well as those set forth in its initial Comments, Motorola Satcom urges the Commission to reject auctions as an acceptable means of licensing the current group of Big LEO applicants.

Respectfully submitted,

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November 30, 1993

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<sup>5/</sup> See Comments of LQSS at 2 n. 3.

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**U.S. House of Representatives**  
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November 15, 1993

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The Honorable James H. Quello  
 Chairman  
 Federal Communications Commission  
 1919 M Street, N.W.  
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Dear Mr. Chairman:

I am writing in response to the Commission's Notice of Proposed Rule Making in PP Docket No. 93-253, which requests comments pertaining to the establishment of competitive bidding procedures to choose among mutually exclusive applications of initial licenses.

As you are well aware, this particular rulemaking is of critical importance, inasmuch as it will establish the ground rules for a new method of awarding radio licenses. I commend the Commission for moving forward on this Notice so expeditiously. I am aware that the new statute imposed tight deadlines on the Commission, and I would like to state at the outset that the Commission has done an extraordinary job drafting an extremely complex Notice in a very short timeframe.

I am, however, concerned about two aspects of the Notice. It is my hope that these comments will assist the Commission in its implementation of competitive bidding in a manner that is consistent with the intent of Congress.

My first concern occurs at paragraphs 28 and 29 of the Commission's Notice. The statutory text requires, and the Notice recognizes, that in order for there to be competitive bidding, that the subject spectrum enable subscribers "to receive communications signals" or to "transmit directly communications signals" [emphasis added].

That Congress included the term "directly" was not inadvertent. The term was incorporated into the legislation in order to distinguish between those who subscribe to spectrum-

based services and others whose use of the spectrum is incidental to some other service. In my view, the term "directly" in this instance in essence requires that subscribers operate a transmitter themselves.

Paragraphs 28 and 29 discuss the Commission's proposal "that licenses used in services as an intermediate link in the provision of a continuous, end-to-end service to a subscriber would be subject to competitive bidding". Inasmuch as these links are incidental to the provision of a different, and not necessarily spectrum-based, service, subjecting these licenses to competitive bidding procedures would be inappropriate.

My second concern relates to the proposed "Big LEO" satellite systems in the Mobile Satellite Service ("MSS"). It is clear to me that these systems will advance important U.S. policy goals, including maintaining America's lead in important technologies and the expansion of the existing telecommunications infrastructure. They will also promote the creation of new jobs throughout the industry and enhance the global competitiveness of the United States in mobile communications technology.

I am concerned, however, that the Commission's limited discussion of the treatment of the pending Big LEO applications in the competitive bidding Notice is an indication that the Commission may be misinterpreting the intent of Congress with respect to licensing Big LEO systems. In its Notice, it appears that the Commission has failed to take notice of important statutory language in the new law, as well as relevant legislative history, which requires the Commission to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means in order to avoid mutual exclusivity in pending application and licensing proceedings, and thereby avoid auctions and lotteries.

As a general proposition, by granting to the Commission the authority to assign licenses by auction, it was never the intent of Congress for auctions to replace the Commission's responsibilities to make decisions that are in the public interest. Rather, the competitive bidding authority was always intended to address those situations where the Commission could not either narrow the field of applicants or select between applicants based upon substantive policy considerations.

The Committee expects the Commission to continue to exercise its responsibilities to determine how spectrum should be used in the public interest and who are the best qualified to undertake that use.

To underscore that auctions are not a substitute for reasoned decision-making, the new statute specifies (at Section

The Honorable James H. Quello  
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309(j)(6)(E)) that the Commission is not to abandon its traditional methods of avoiding mutual exclusivity. Congress clearly had the Big LEO proceeding in mind when it added this language to the bill because it believed that mutual exclusivity could be avoided in that proceeding.

A brief review of the relevant legislative history should assist the Commission in its deliberations in both the competitive bidding docket and the Big LEO proceeding. In the original House Report language (House Report No. 103-111, at p. 258) from which this statutory subsection was drawn, the Committee stated:

In connection with application and licensing proceedings, the Commission should, in the public interest, **continue to use engineering solutions, negotiation, threshold qualifications, service rules, and other means in order to avoid mutual exclusivity.** The licensing process, like the allocation process, should not be influenced by the expectation of federal revenues and the **Committee encourages the Commission to avoid mutually exclusive situations, as it is in the public interest to do so. The ongoing MSS (or "Big LEO") proceeding is a case in point.** The FCC has and currently uses certain tools to avoid mutually exclusive licensing situations, such as spectrum sharing arrangements and the creation of specific threshold qualifications, including service criteria. These tools should continue to be used when feasible and appropriate [emphasis added].

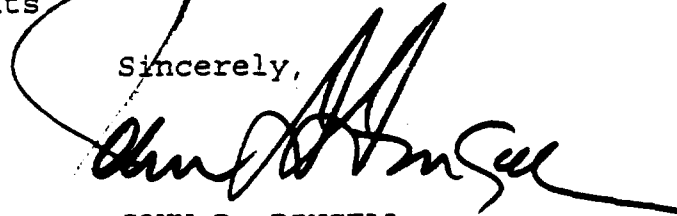
In light of the provisions of the House Report, the final statutory language signed by the President, and the presence of viable spectrum sharing plans, such as the one contained in Motorola Satellite's and Loral Qualcomm's joint submission, it is clear that the Commission has an obligation to attempt to avoid mutual exclusivity among qualified applicants in the Big LEO proceeding. While the contents of paragraph 156 of the Notice may provide a healthy incentive for the various applicants to conclude their negotiated rulemaking successfully, I trust that the Commission is aware of its own responsibilities in this regard.

As I noted at the outset, the Commission's Notice represents an extraordinary effort in a very tight timeframe, and I congratulate you for the job that you have done. I ask that a copy of this letter be made part of the Commission's record in

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this proceeding, and hope that it is useful to you as the Commission deliberates on the appropriate uses of its competitive bidding authority. If I or the Committee staff can be of any assistance to you, please do not hesitate to contact me. I look forward to reviewing your decision, and to receiving your response to these comments

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell", with a large, sweeping flourish extending from the end of the signature.

JOHN D. DINGELL  
CHAIRMAN

### CERTIFICATE OF SERVICE

I, Philip L. Malet, hereby certify that the foregoing Comments was served by first-class mail, postage prepaid, this 30th day of November, 1993 on the following persons:

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\* Delivery by hand.